XI-HC-22

(22)

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH BILASPUR

CRIMINAL APPEAL NO. 248 of 2005

APPELLANT (IN JAIL) — Darbashinu S/o Kanna Babu, aged about 21 years, occupation labourer, resident of Sidiya, New colony, House No. 51803, Vishakhapattanam, Thana Sidikada, District Vishakhapattanam (AP)

VERSUS

RESPONDENT — State of Chhattisgarh, through the District Magistrate Durg (CG)

Present:

Mr. Sunil Sahu, counsel for the appellant.

Mrs. Madhunisha Singh, P.L. for the State/respondent.

ORAL JUDGMENT

(5th October 2007)

Dhirendra Mishra, J.

This criminal appeal is directed against the judgment of conviction and order of sentence dated 5th March 2005 passed in N.D.P.S. Special Case No. 13/2004 whereby learned Special Judge (NDPS Act) Durg has convicted the appellant under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity 'the Act') and

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	sentenced him to undergo RI for 10 years, pay a fine of Rs.1,00,000/- and in default of payment of fine to further undergo RI for one years. 2. Case of the prosecution in brief is that Incharge Police Outpost-Khursipar I.R.Sahu (PW-6) received a secret information that a person named Shrinu is carrying cannabis to sell the same at Khursipar area, whereupon he recorded the information and forwarded the same to City Superintendent of Police, Chhawani (Cant). Thereafter, he proceeded for the place of incident Anda Chowk, Khursipar and found the accused carrying one regzine *attachée* (suitcase) and one ragzine bag. After following the procedure prescribed for effecting search and seizure and after obtaining consent of the appellant to be search by him, the *attachee* and bag were opened before the witnesses, which was examined by the witnesses who found the same to be Ganja. On search 16 kg. of cannabis was seized from the *attachee* and 6 kg from regzine bag. Thereafter, two samples of 25 gms each were drawn from both the containers and seized cannabis along with two samples were taken into possession vide seizure memo of Ex.P/4. On the basis of seizure unnumbered First Information Report of Ex.P/11 was	

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registered on the spot and after reaching the Police Outpost FIR of Ex.P/11 along with seized contraband was handed over to the Head Constable Shivnandan (PW-1). The samples were sent for chemical examination to Forensic Science Laboratory through Superintendent of Police, Durg vide Ex.P/12 and the report of FSL is Ex.P/13. After completing investigation charge sheet was filed against the appellant.

3. During trial eight witnesses were examined by the prosecution. Thereafter, statement of the accused was recorded under Section 313 of the Cr.P.C. wherein he denied the circumstances appearing against him and specifically pleaded that he is a Telgu speaking person and he does not know Hindi language, therefore, he is not aware of as to what questions were put to him by the police in Hindi. He pleaded innocence and false implication. However, learned trial Court after hearing counsel for the respective parties convicted and sentenced the accused/appellant as mentioned in paragraph 1 of this judgment.

4. Learned counsel for the appellant has assailed the judgment of trial Court on the following grounds:

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(i) that the appellant is not conversant with Hindi language as he is a Telgu speaking person. However, his statement under Section 313 of Cr.P.C. was recorded with the aid of interpreter. Panch witnesses PW-2 Kallu Pal and PW-5 Brajesh Yadav have admitted this fact in their cross-examination that the appellant did not understand Hindi and therefore, the police called some Telgu speaking person and interrogated the appellant through him. However, this fact is not mentioned in the charge sheet whereas the investigating officer (PW-6) in paragraph 18 has stated that since the accused was replying his queries in Hindi, he did not think it necessary to call interpreter.

(ii) that from perusal of seizure memo of Ex.P/4, it is clear that the investigation was completed and seizure was effected by 11.00 a.m. on 23.5.2004, however, the seized contraband was received at Police Outpost and accused was arrested at 11.25 p.m. whereas the seized contraband was deposited in the Police Outpost only at 13.00 hours as

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admitted by the Investigating Officer I.R. Sahu (PW-6) in paragraph 18 of his deposition. There is no evidence that the same was kept in safe custody in the meanwhile.

(iii) that PW-1 Shivnandanlal Sahu, Head Constable of Police Outpost has stated that the contraband was received in his Outpost on 23.5.2004, which was entered into Seized Goods Register at Sl.No.23 and the same was forwarded to Police Station - Cant on 23.5.2004 and there is entry to this effect in the register. However, PW-3 Manharan, Head Constable of Police Station – Cant has stated in his cross-examination in paragraph 3 that the seized article was received from Police Outpost Khursipar on 26.5.2004 and the same was not received on 23rd and he has no knowledge as to in whose custody the contraband was in between 23rd to 26th.

(iv) that there is discrepancy with respect to time of seizure in the statements of investigating officer and Panch witnesses.

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(v) that there is no evidence available on record that the investigating officer after conducting investigation handed over the seized article along with accused to the Incharge of Police Outpost who after receiving the contraband would have affixed his seal on these articles and as such, there is a total non-compliance of Sections 52 and 55 of the Act.

5. On the other hand, learned counsel for the State supports impugned judgment of trial Court.

6. I have heard learned counsel for the parties and have gone though the impugned judgment and the evidence available on record.

7. I.R. Sahu (PW-6), the investigating officer, has stated in his deposition that he received secret information that one Shrinu is carrying cannabis for the purposes of selling it at Khursipar area. After recording the above information and forwarding the same to C.S.P., he proceeded for the scene of occurrence and saw the appellant carrying one *attachee* and bag. After obtaining his consent for search and seizure, both the bags were searched in the presence of witnesses and they

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	found the contraband to be Ganja. After satisfying by preliminary examination by tasting, smelling that the contraband was cannabis before the witnesses, identification memo of Ex.P/2 was prepared. The weighment of contraband was done by Vijendra Kumar (PW-4) vide weighment memo of Ex.P/3. Two samples of 25 gms. each were drawn from both the containers and thereafter, seizure memo of Ex.P/4 was prepared. On the spot unnumbered FIR of Ex.P/11 was prepared and the same was subsequently handed over in Police Outpost to Head Constable Shivnandanlal. The samples were forwarded through Sr. S.P. to F.S.L. and the report of FSL is Ex.P/13. In the cross-examination this witness has stated that though the appellant is Telgu speaking but he was able to speak Hindi. 8. PW-2 Kallu Pal has deposed that on the date of incident at around 9-10 in the morning a crowd was gathered near Anda Chowk, the police persons were also there and he saw the appellant there. The *attachee* and bag were lying there. The *attachee* and bag were opened before him and 15-20 kg of cannabis was found. The accused was not knowing Hindi. The documents of Ex.P/1 to P/6 bear his signature. After weighment the cannabis was seized vide Ex.P/4. The	

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	appellant was arrested before him vide Ex.P/6. In the cross-examination he has stated that he reached Anda Chowk around 8.30 to 9.00 a.m. and returned from there to his home by 8.30 to 9.00 a.m. He has further admitted that he was not given any notice by the police and he signed all the papers without reading on being asked by the police. He is saying that the contraband was Ganja only because the police has informed his that it was Ganja. 9. PW-5 Brajesh Yadav, has stated that he saw the accused for the first time on the date of incident at about 10.30 in the morning. The police persons came from 2-3 directions and stopped the Rickshaw, in which the appellant was sitting. He had a suitcase and bag from which cannabis was recovered and the same was weighed. On the leading questions by the prosecution, this witness has denied that the appellant was given an option to be searched by any gazetted officer or before the Magistrate. However, he has said that he signed the paper on being asked by the police and the police did not interrogate from the accused in his presence. He has further admitted his signature over the document of Ex.P/2 to P/6. This witness has stated that the appellant was	

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not conversant with Hindi language and therefore, he was interrogated with the help of Telgu speaking person.

10. From the evidence available on record it is also established that there is no evidence that after seizure of the contraband effected on 23.5.2004, the same was stored in the safe custody by the investigating officer or the same was handed over to the Incharge of Police Station – Cant. While PW-1 Shivnandanlal, Head Constable of Police Outpost has stated that the articles were forwarded to the Police Station on the same day for safe custody, the Incharge of Malkhana (Godown) of Police Station – Cant has categorically stated that he did not receive the contraband before 26th from Police Outpost and he is not aware of the fact as to where the same was kept in between 23rd and 26th. Apart from this, the investigating officer has not stated a word in his deposition that after effecting seizure he sealed the contraband as also two samples drawn from both the containers and handed over the same for safe custody to the Incharge of Police Station – Cant. Even the seal is not affixed on the seizure memo of Ex.P/4. There is non-compliance of Sections 52 and 55 of the Act as there is no evidence on record to show that after seizure of the contraband, the same was handed over to the

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	Incharge of Police Station – Cant for safe custody after sealing it by affixing his own seal. 11. In view of above non-compliance if the evidence adduced by the prosecution to prove the search and seizure is scrutinized, it is observed that there is material discrepancy with respect to time of the incident as also the interrogation of the accused during investigation. The appellant has taken a specific defence in his statement under Section 313 of Cr.P.C. that he does not know Hindi and therefore, he could not understand the questions put to him by the police during investigation. His defence is also reflected from the statement of Panch witnesses PW-2 Kallu Pal and PW-5 Brajesh Yadav who have also stated that the accused was not understanding Hindi and therefore, he was interrogated with the help of some Telgu speaking person. However, the investigating officer has deposed that though the accused is a Telgu speaking person but since he was answering the questions in Hindi, he did not think it necessary to call an interpreter. 12. In view of the evidence available on record, the statement of investigating officer does not inspire confidence. There is no material available on record that the interrogation	

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	of the appellant was done with the help of any interpreter, as claimed by the witnesses, and taking into consideration the discrepancy present in the statements of the Investigating Officer on the one hand and two Panch witnesses on the other, the whole investigation appears to be doubtful. 13. For the aforesaid reasons, the impugned judgment of trial Court based on the statements of above witnesses who have proved the seizure of cannabis from the custody of appellant, cannot be sustained and the trial Court ought to have extended benefit of doubt to the appellant. 14. In the result, the appeal preferred by the appellant is allowed. Impugned judgment of the trial Court convicting and sentencing the appellant under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 is set aside. He is acquitted of the above charges. He be set at liberty forthwith if not required in any other case. Sd/- Dhirendra Mishra Judge	

पोस्ट